Asam. Const.
Alss.
I-1.

September 1, 1934

APERTURA DE LA SESION

Se abre la sesión a las 9:3: a. m., ocupando el estrado el Vice-presidente, Hon. Ruperto Montinola, por designación del Sr. Presidente.

EL VICE PRESIDENTE. Se abre la sesión.

DISPENSACION DE LA LECTURA DE LA LISTA EX DEL ACTA.

SR. ESCAREAL. Sr. Presidente.

EL VICE PRESIDENTE. Sr. Delegado.

SR. ESCAREAL. Pido que se dispense la lectura de la lista y del acta, y que este se dé por aprobada.

EL VICE PRESIDENTE. Tiene la Asamblea alguna objeción a la moción (Silencio). La Mesa no oye ninguna. Queda aprobada.

DESPACHO DE LOS ASUNTOS QUE ESTAN SOBRE LA MESA DEL SR. PRESIDENTE.

EL VICE PRESIDENTE. Léanse los documentos recibidos.

EL SECRETARIO, leyendo (insertense)

MOCION KAPUNAN Y SU APROBACION

EL SR. KAPUNAN. Sr. Presidente.

EL VICE PRESIDENTE. Sel Delegado.

SR. KAPUNAN. Presento la moción de que para después de que se hayan consumido las diez horas, de conformidad con el acuerdo anterior de la convención, se siga la discusión del asunto sobre la proposición Osías, concediendo a todos y cada uno de los que quieran tomar parte en su discusión diez minutos para consumir sus turnos respectivos.

SR. ROXAS. Secundo la moción.

EL VICE PRESIDENTE. Hay alguna objeción a la moción? (Silencio). La Mesa no oye ninguna. Cuda Aprobada.

SR. KAPUNAN. Sr. Presidente, cedo diez minutos al Delegado por Negros, Sr. Ledesma.

MR. LEDESMA. Mr. President.

THE VICE PRESIDENT. The gentleman from Occidental Negros has the floor.

SPEECH OF MR. LEDESMA

Mr. President, and Gentlemen of the Convention:

If the purpose of the resolution under discussion simply serves as a notice to the members of this Assembly, that the precepts to be embodied in the Constitution of the Commonwealth may not be so limited in scope as to serve only the purpose of the transition period, but should be broad, so that the people of the free and independent Philippines ten years hence, may at their option deem it wise to continue under the same constitution, as expressed by the Gentleman from Capiz the other, thay I am in favor of the idea, Bur if the object of the resolution is that the constitution we are drafting is binding on the free and independent Philippines, I beg leave to disagree with said resolution on the following groundss:

The Philippine Republic which will be established at the end of the transition period will be an entirely new legal creation, with a personality distinct from that of the Commowealth. Unlike its predecessor, the commonwealth, it will have absolute sobereignty, in the true sense of the word, a sovereignty which even the Republic itself cannot alienate even to a part of its own organism. If it cannot do this contemporaneously, much less can a body foreign to it such as we are now, do so prematurely and without any mandate from it. To have the fundamental law of the Phi-

Philippine Republic prearranged and pre-drafted for it ten years in advance would be to derogate very much from its importance, It would be robbing the Philippine Republic of such of its glory. Such an act would be a usurpation of the most transcedental power of an independent state. At this juncture may I remind this august body that it is usurpations like this which have caused, and perhaps justified, revolutions in many countries. In these countries there were rulers in the past who upset the balance of their constitution by arrogating into themselves the powers which would have been left to the people.

The scope of the authority of this convention is defined and limited in very explicit language in Section 1 of the Tydings-McDuffie Law which provides that the delegates of this Convention shall "formulate and draft a constitution for the Government of the Commonwealth of the Philippine Islands . . ." I submit that the expression "Commonwealth of the Philippine Islands," as used here refers to that juridical entity which will exist during the transition period. This can be deduced from two facts: First, the expression begins with a capital letter, this indicating that it refers to a person, artificial person, and not to a thing; second, throughout the Tydings-McDuffie Law we come across distinctions made between the commonwealth of the Philippine Islands as existing during transition period and the "free and independent government of the Philippine Islands" which shall begin to exist after the transition period. In other words, there is a clear demarcation line between the transition government and the

independent government, and the transition government is referred to as the commonwealth of the Philippine Islands while the independent government simfoy as the free and independent government of the Philippine leaving it to us to choose its official name.

During the transition period of 10 years we will have a wederful opportunity or storing up a great deal of experience in constitutuinalism. The most effective way to tarn into account that wealth of experience, will be, to apply it in the renovation of our Constitution at the beginning of the republic. A wholesome revision of the Constitution on a systematice and scientific basis is always preferrable to a peice-meal, hit-or-miss amendment thereof. The former has direction, symmetry and proportion; the latter leads to chaos and confusion.

The argument has been advanced that constitutions are usually meant for all time and posterity and not for a determinate period. That is true, because usually there is no new state in sight. But our particular case is different. We anticipate the birth of a new nation. That new nation should be allowed to shape its own destiny without any fetters.

The most that this resolution can amount to it an expression of opinion. We can pass one thousand resolutions to this effect and yet not bind our people ten years from now for there is no such thing as an irrepealable law. If our people should want a new constitution for the Republic who could prevent them?

The gentleman from Batangas said yesterday that the Constitutional Assembly derived all its power from the people. Th this I disagree because the constitution which this convention is drafting will derive its authority from the people of the Philippine Islands only in a very limited sense because as everybody knows it shall require the approval of the President of the United States. While, if we shall draft an entirely new constitution for the Republic it will not have to be submitted to any external authority. Then and only then can we proudly say to the world that our constitution is completely and absolutely the handiword of our people.

The gentleman from Batangas further said, if I understand him well, that the people may say to us "You have done so little when you have the power to do more." But gentleman, the electorate that sent us here was in the belief that we will draft a Constitution for the Commonwealth. I am sure, this is the concensus of opinion all over the Islands. As for my part therefore, I must confess that I have not got the nerve to go beyond the power, beyond the authority vested on me. We have had many cases of envoys and delegates who have been disauthorized by the people who sent them because they have assumed full responsibility, they have disoberyed and have gone beyond the instructions given them. I cannot speak for all of you, but as for myself I want to avoid the humiliation of behind isautohrized, by limiting myself to what I believe I have authority todo. However, if the people afterward believe that the piece of work

that we have done is good enough to serve for a longer period of time, so much the better. But let them be the judge; and therefore, let us not mention in a form of a resolution, that the Constitution we are drafting now, is good and binding for all ages and all times.

MR. ROXAS. I yield fifteen minutes to the gentleman from Ilocos Sur, Mr. Joven.

MR. JOVEN. Mr. President and Gentlemen of the Convention - Yesterday, in the course of his speech before this august body against the pending resolution, the gentlemen from Ilocos Norte, Mr. Ventura, argued against the approval of the resolution because, according to him, there is no necessity for it. He said that the provisions of the Independence Law are very clear empowering this Constitutional Convention to formulate a constitution that will operate and be in force even beyond the period of the Commonwealth government, — so clear are the provision, that there is no need for this convention to pass the resolution. To me also it is plain from the provisions of the Independence Law that we have the power to draft such Constitution. But, Mr. President, the fact that some of the delegates who have already spoke have taken the stand and argued that this Convention is with power to draft a constitution that will operate only during the Commonwealth government, is the best proof that we should act on the pending resolution. When such illustrious members of this body as Mr. Francisco of Cavite and Mr. Loernzo of Zamboanga beelieve that under the terms of the IndppendenceLaw, we do not possess the power to draw up

a constitution extensive and operative when the Philippine Islands has become completly independent, the necessity now for defining the stand of this convention on the matter is certainly obvious.

The gentlemen who has just preceded me contended that by making a constitution now that will extend in force and operation even after independence, we will bind our future generations, the inhabitants of the free and independent Philippines. I am not in accord with the view of the gentleman.I believe that even though we draft a constitution to serve not only for the period of the Commonwealth government but also even beyond that period, the people or the Philippine Islands, when they are independent, when they are soveriegn and the supreme authority of government resides in them, shall always have the right shall always have the authority, to amend, change, or abrogate entirely, as they will it, the constitution that we are going to formulate. As sovereign people, they will have the right at any time to assert their paramount power and authority.

I am for the pending resolution in principle. I believe that its object or purpose is plausible and well-taken. I believe that vefore we proceed further in the task of formulating a constitution for the nation, we shouldh have a definite idea of the scope which that constitution will have. I believe that we should now determine whether the constitution to be drafted by this Convention can and should be made operative after the period of the Commonwealth government or whether it can and should be extensive only diring such period. The ques-

tion should be now settled, in order that we may have a criterion by which we are to guide ourselves -- the different members and committees of this convention and the Convention itself as a whole -- in formulating the various provisions of the constitution. This, as I understand it, is merely and plainly the aim of the pending resolution. Should the convention decide that the constitution is to operate only during the period of the commonwealth, government, the transition period, the provisions, of such constitution will be so framed that they will be effective only during that period. If on the other hand, it should determine that it is to operate even after the transition period, of c urse, the provisions thereof will be accordingly worded. As there are members of this body who believe that this Convention is without power to draft a constitution that will operate or be in force even after the transition period, while other members, like myself, maintain that it possesses such power and shoula avail itself of it, common sense, therefore, dictates that it is at this stage of our deliberations, this stage in which the provisions of the constitution to-be are in the process of conception, so to say, that the question should and must be definitely decided one way or the other.

I stand squarely on the proposition that this Constitutional Convention is empowered to draft and formulate a constitution t at will operate not only during the period of the commonwealth government but also thereafter, and that this convention should draft and formulate such constitution.

The other day, a member of this august body, who spoke on the resolution unde consideration -- he did not state whether he was really for or against the resolution -- made a statement, if I understand him corsectly,

to the effect that it would be a source of pride on his part, on the part of the youth of this country, and on the part of future generations, if the constitution we are to draft will serve not only for the Commonwealth government but also for the completely independent Philippine government. It is not in this spirit, Mr. President, that I rise today to give expression to my sentiments in favor of the resolution in its object and purpose. It is not from a desire to ehhance the powers, the importance, the prestige, of this Convention or of ourselves that has motivated me to take the stand that the constitution to be made can and should be extended in force and operative beyond the period of the Commonwealth government. I have so much respect for the majesty of the law that I would not, even for self-elevation entertain for a moment in my mind the idea of arrogating unto this Convention powers that it did not have and of imposing upon it responsibilities not given it. But, on the other hand, if we have the power, if we are charged with the duty and responsibility of formulating a constitution that will extend in operation beyond the transition period, no consideradion of the difficulties that are likely to arise in making the provisions of the constitution will deter us from utilizing the power, from discharging and assuming the duty and reposibilities. To act otherwise would be a dereliction of duty. It would be cowardice.

But does this constitutional Convention posses the power to draft a constitution intended to operate and be in force even after the transition period? Delegates

who have already spoken against the resolution maintain that it does not possess the power. Others maintain that, given such power, it should nevertheless not express itself that it possesses the power, not only because that is not necessary but also because the Convention will thereby commit itslef to a graver and more difficult tahk and responsibility, which it may not satisfactorily fulfill. Thes are the two points I am going to discuss—— that this constitutional convention has the power, and that it should, it must, make use of it.

I do not quite agree with the gentleman from Capiz, Ex-Speaker Roxas, when he said that a Constitutional C Convention in the United States is not a sovereign body or that it has only limited powers. True, American authorities are not wanting which hold that a constitutional convention has only such powers as are expressly conferred, and such other powers as may be necessarily implied from thos expressly granted. But the weight of American authrity is to the effect that the convention, when in session, is a fourth branch of the government, and it can even enact and promulgate a constitution without the approval of the people, altho it is not a good policy to doso.

Hoever, even if we were to adopt here the first view, what I may call the narrow view, that is, that a constitutional convention has only such powers as are expressly conferred by the legislative act under which it is assembledd and such other powers as are necessarily implied from those expressly granted, I believe that this Convention is empowered to draft a constitution extensive and operative beyond the transition period. In the act or

law passed by the Philippine Legislature providing for the election of delegates to this Convention, it did not prescribed the powers which the convention would have, contenting itself with making a reference to the Independence Lae passed by Congress; and rightly so, for it could not have enlarged the powers conferred upon the convention by that Independence Act. Therefore, in determining the powers of this convention and the extent thereof, I believe that we have to consult only the Independence Law. The law, to my mind, is the only yardstick by which the powers of the convention should be measured. I believe that the point regading sovereignty brought up in the discussion of the resolution is not germane to the question of whether we can draft a constitution that will operate and be in force even beyond the transition period. The point is, under the terms of the Independence Act, do we have the power to do that?

In my humble opinion, the words, "government of the Commonwealth of the Philippine Islands", found in section 1 of the Independence Law as used therein are merely descriptive. They are not defining, limiting or restricting. Mu contention is supported or confirmed by a reference to other provisions of the law itself. Some of which are to be made necessarily a part of the constitution and which are to take effect or be in force after the period of the Commonwealth government. With due respect to the gentleman sho have expressed a contrary view, I contend that by clear provisions of the Independence Act, we are to frame a constitution whose life limit will not be only during the period of the Commonwealth government.

law passed by the Philippine Legislature providing for the election of delegates to this Convention, it did not prescribed the powers which the convention would have, contenting itself with making a reference to the Independence Lae passed by Congress; and rightly so, for it could not have enlarged the powers conferred upon the convention by that Independence Act. Therefore, in determining the powers of this convention and the extent thereof, I believe that we have to consult only the Independence Law. The law, to my mind, is the only yardstick by which the powers of the convention should be measured. I believe that the point regading sovereignty brought up in the discussion of the resolution is not germane to the question of whether we can draft a constitution that will operate and be in force even beyond the transition period. The point is, under the terms of the Independence Act, do we have the power to do that?

In my humble opinion, the words, "government of the Commonwealth of the Philippine Islands", found in section 1 of the Independence Law as used therein are merely descriptive. They are not defining, limiting or restricting. Mu contention is supported or confirmed by a reference to other provisions of the law itself. Some of which are to be made necessarily a part of the constitution and which are to take effect or be in force after the period of the Commonwealth government. With due respect to the gentleman sho have expressed a contrary view, I contend that by clear provisions of the Independence Act, we are to frame a constitution whose life limit will not be only during the period of the Commonwealth government.

The opening part of section 2 of the Independence Law reads: "The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, shall either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands." If Congress intended that the constitution authorized to be drafted under the law be in force only during the period of the Commonwealth government, it would not have inserted in the law the words, "pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands." There would have been no necessity for those words. It would have simply said, "The constitution formulated and drafted shall be republican in form, shall contain a bill or rights," etc., without inserting the words, "pending the final withdrawal of the sovereignty of the United States."

The intention of these words clearly signify that the constitution may or will continue in force after said transition period. The mandatory provisions under said section will or may be set forth in an ordinance appended to the constitution so that, being temporary in character intended by Congress to be in force only during the Commonwealth government, they (the mandatory provisions) will cease to exist upon independence, altho the constitution or the other parts thereof will yet be in force.

MR. ROXAS. I yield five more minutes to the speaker.

The first part of letter (b) of section 2 of the Independence Law provides: "That the constitution shall also contain the following effectinve as of the date of

the proclamation of the President recognizing the independence of the Philippine Islands as hereinafter provided." The provisions required to be embodied in the constitution shall take effect after the period of the Commonwealth government, upon independence. If Congress meant, if the law intended, that the constitution will be in force only during that period, where, after said period, will these provisions be that are then to take effect. Either there will be a constitution or there will be none at all. Those oppose to the pending resolution cannot eat their bread and have it. The constitution to be formulated by us is manifestly intended by Congress under the terms of the Independence Act to be in existence and in force even after complete independence is granted.

Mr. President, as I have a limited time, I will jump to another point.

The transition from the commonwealth government to the independent government will be automatic under the provisions of the Independence Law, dependent only on the expiration of ten years after the establishment of the Commonwealth. For this reason the constitution will, as is authorized, extend in force and operation after the commonwealth government has ceased to exist.

Taking into consideration the Independence Act as a whole I believe there is no room for doubt that the words "government of the Commonwealth of the Philippine Islands," in section 1 thereof are merely discriptive, not limiting or restricting words. Any other interpretation will result in absurdity. Congress would be inconsistent, and the provisions of the law contradicting. If I remember my law right, I believe that among the well-settled rules of interpretation and

construction is that such interpretation as will result in absurdity should be avoided, and that where parts of a law are seemingly inconsistent, such interpretation will be adopted, if possible, as will reconcile the apparent inconsistencies so as to give effect to the whole statute.

MR. ROXAS. I yield five more minutes to the speaker.

I would like to disgress somewhat from the question under discussion. I desire to take advantage of this opportunity to state that there will be no need of embodying in our constitution the provisions of section 6 of the independence law, those of section 7 except paragraph (1), (5) and (6), and those of sections 8 and -. This is because these provisions per se aare not to be in the constitution. Also, the Independence Law does not require that they be embodied in the constitution. And they will be binding upon the Philippine government, even ~~xxxxxxx~~ tho they are not contained in the constitution, as that law is binding on us. My point is this: All of the provisions of the Independence Act will not have to be embodied in the constitution and the constitution will not be very difficult to formulate in oder to make it extensive beyond the period of the Commonwealth government.

Unless we shall be given another authority Congress during the commonwealth government to draft another constitution, we shall not have any other constitution at the end of that government than the one this Convention is going to formulate. The constitution that will result from the deliberations of this body will remain the same constitution, altho it will be amended during the transition period, and it can only be amended in accordance with the means provided or to be provided therein. I do not believe in the assertion

that the Filipino people will have the power to authorize the formulation of another constitution during the commonwealth government without the authority of Congress. Congress wil have to act again, and, in my opinion, it will not be advisable to ask ahtority from Congress again to make another constitution, when now it has given us the power or right to formulate a constitution that will serve and answer our purposes.

The formulation now of a constitution intended to operate even after independence is given us, will not deprive future inhabitants or any right in regard to the making of another constitution when the country is completely independent. The people will then be sovereign, the supreme authority residing in them. In the exercise of their supreme and sovereign power they will be at liberty to do away with the constitution to be framed by us and change it with another one entirely of their own making. After independence, it will be for them, thru their duly constituted representatives, to decide whether to continue or not continue with the constitution we are going to make. They will have the right to do as they please with it. They may have it amended in accordance with its own provisions, or they may altogether abrogate it. The Legislature then existing may authorize the calling of a constitutional Convention to formulate another constitution. In other words, the constitution we are to make will be in force until changed by the pople, who can at any time assert their paramount authority. If the future generations of our country will see fit to continue with it, if they believe that its provisions are suited to their conditions and responsive to their needs, there will be no necessity for them to change it, and they will not change it, cherishing it in gratefulness as a memento of the wisdon and foresight with which their forebears faced and discharged their responsibilities. Let me indulge in the hope,

Mr. President, that we will draft a constitution, of which our posterity will not blush in shame, that will merit their approval, praise and respect. If we have the power to draft a constitution intended to operate and be in force to draft during the period of the Commonwealth government but also upon the advent of independence, and I trust I have shown we have, then it is our duty to formulate such constitution. The responsibility is ours, a responsibility whose source are the people, to make a constitution extensive when we are free and independent. We can ill-affords to evade that responsibility. We must meet it like men. Let it not be said, Mr. President, that we in this assembly, unlike our forebears who in peace and in war, in rain and sunshine, confronted their responsibilities unflinchingly, are timid and hesitant before our responsibilities, afraid to assume them, failing to measure up to their heights.

MR. ROXAS. Mr. President, unless the gentleman from Leyte objects, I would like to recognize the gentleman from Manila, Mr. Palma, for just two minutes in order to make a statement regarding the report of the speech that he made yesterday inserted in the newspapers, which he believes incorrect, just for the record.

EL VICE PRESIDENTE. Tiene la palabra el Delegado por Manila.

SR. PALMA. Sr. Presidente, y Caballeros de la Convención: Agradezco infinito el privilegio de permitirme hablar solamente con el proposito de rectificar lo publicado en cierta parte de la prensa esta mañana, al efecto de que mi discurso de ayer imparte la impresión de que yo dudo de la independencia y que contradigo uno de losprincipios de mi partido. Considero, al propio tiempo, que es un

privilegion de cualquiera de los miembros de esta Asamblea el de no ser presentado de l público de distinto modo del que uno es y de que no se interpreten los discursos que non pronuncie aqui en distinto sentido del que tienen. Yo no he dicho ayer, y creo que mi afirmación lo sostendrían los miembros de esta convención, de que no creo en la independencia. Lo único que dije era que posiblemente podrán haber dos contingecias que pudieran impedir el advenimiento de la independencia, una por parte de los Estados, Unidos, si este pueblo de no demuestra la debida mesura y discreción durante el periodo de la que no creen en la independencia pudiera ofrecer suficiente obstaculo para su definitiva realización. Y estas dos contingencias las presentaba en realción con mi idea de que no debemos escribir la Constitución para la Republica Filipina, porque estas contingencias podrían sobrevenir.

Por lo tanto, deseo expresar mi protesta y mi rectificación a lo publicado por la presnsa esta mañana. Muchas gracias.

SR. SOTTO. V(). Sr. Presidente, para algunas preguntas al orador. EL VICE PRESIDENTE. El tiempo del Caballero por Manila ya ha expirado y dicho caballero ya se ha sentado.

SR. ROXAS. Sr. Presidente, concedo un minuto más de tiempo al Delegado por Manila para que puede contestar a las preguntas que deseo dirigirle el Delegado por Cebú.

EL VICE PRESIDENTE. En ese caso, puede el Caballero por Cebu formular sus preguntas.

SR. SOTTO (V.). S. S. ha dicho que la prensa ha dicho que ha contradicho uno de los principios de su partido. Quisieramos saber si su partido ya tiene plataforma.

SR. PALAM. No habría aparecido si no tuviera plataforma.

SR. SOTTO (V.). Hasta ahora se desconoce la plataforma de su partido.

SR. PALAMA. Se ha publicado.

SR. SOTTO (V.). No se ha publicado.

SR. PALMA. La conozco y es bastante.

SR. KAPUNAN. Sr. Presidente, cedo diez minutos al Delegado por Tayabas, Srl Godofredo Reyes.

EL VICE PRESIDENTE. Tiene la palabra el Delegado por Tayabas.

SR. REYES (G.). Señores de la Convención, creo de mi deber, después de oir tantos y tan brillantes discursos, exponer de antemano, por que he de consumir un poco más de tiempo y he de abusar un poco más de la paciencia de losSre. Delegados ahora presentes. No es mi proposito pronunciar un discurso sino solamente hacer algunas observaciones para aclarar el punto discutido desde hace m´s de una semana en esta Convención, y al propio tiempo presentar un aspecto del asunto que hasta ahora he esperado que se discuta, aunque en vano. En los brillantes discursos pronunciados anoche en esta convención, se ha discutido si tenemos o no tenemos facultad para promulgar una constitución que rija para el Estado independiente filipino; se han citado disposiciones de la ley Tydings-McDuffie y se ha arguido sobre si tenemos o no tal facultad. Señores, la cuestión es si tenemos facultad para preparar una constitución para el gobierno filipino independiente, y los argumentos sobre este particular enteramente obscurecen el punto débatido. Si queremos, tenemos facultad para pre parar desde ahora una constitución que rija para el gobierno filipino independiente, y también una constitución para cuando sea iniquilado el gobierno independiente y vuelva a resucitar. Si queremos, podemos hacerlo. No hay cuestión

733

alguna sobre este aspecto legal del asunto. La facultad es inherente en nosotros, porque aunque hemos estado subyugados, la soberania de nuestro pueblo duerme latente en nuestros corazones y no he podido ser arrecado por nadie.

El aspecto verdadero de la cuestión no es un aspecto legal, sino un aspecto politico y moral, un aspecto de conveniencia plotica y de principio de moralidad. El primer punto sobre el cual debemos deliberar es si la cuestión de preparar o no preparar ahora una constitución para el Gobierno filipino independiente, es una cuestión que puede envolver consecuencias graves y perjudicialase para nuestro país. La cuestion de preparar ahora mismo un constitución para el gobierno filipino independiente, se ha dicho por muchos que es innecesaria. Si fuera solamente innecesaria yo votaría por la resolución ajora mismo, porque yo quisiera poder preparar desde ahora el legado politico que hemos de dejar a muestra posteridad, pero señore, no solamente es innecesario, sino que es solamente denigrante para el pueblo filipino, para todos y cada uno de nosotros que estamos presentes qqui; sería degradar a nuestro pueblo y someter una injusticia muy grande, una injusticia moral para el pueblo que nos ha elegido.

Señores, todos sabemos que la constitución que nosotros preparamos ahora se va a someter al Presidente de los Estados Unidos para su aprobación o desaprobación; de modo que si nosotros preparamos una constitución para el commonwealth y esa constitutión al propio tiempo la hacemos para el gobierno independiente de Filipinas, nosotros hemos de someter al Presidente de los Estados Unidos la constitución de nuestro gobierno independiente. Por que razón hemos de someter a una persona extraña, sea el Presidente

de los Estados Unidos, sea el Presidente del Congo, por que hemos de someter nuestra propia constitución que ha de ser la expresión de todos nuestros ideales, de todas nuestras esperanzas, de todas nuestras aspiraciones, la expresión exclusiva de nuestra soberanía sin limitaciones ni restricciones. Que dirá el Presidente de los Estados Unidos de un pueblo como el nuestro que lo somete la constitución que debe preparar por si mismó, que debe ser de su exclusiva responsabilidad? Serfamos el hazme reir de todo el mundo. Por que hemos de someter nuestra soberanía, a otra, que debe ser completa y exclusiva? Por que la hemos de someter a un hombre extraño? No hay razón alguna. Esa es la razón que estaba esperando de algunas disertaciones de las muchas que hemos oido en esta Asamblea. Someter el Presidente de los Estados Unidos esa constitución, equivaldría a que nosotros preparaemos una bandera filipina y despúes fueramos al gobierno de los Estados Unidos a preguntar si le conviene o no le conviene los colores de esa bandera; si le conviene o no le conviene el tamaño de la bandera que hemos adoptado; sería un acto no solo pueril, sino un acto despreciable de dependencia y servilismo. Vamos a fúgurarnos, señores, por un momento, que nosotros redactamos esa constitución del gobierno filipino independiente. Esa constitución . . . . . esa concreción de nuestro ideales y que debiera escribirse, si es posible, con la sangre de todos los que se sacrificaron por nosotros, vamos a suponer que la presentemos al Presidente de los Estados Unidos, que dirfa el Presidente? no puedo aprobar ni desaprobar semejante constitución, porque esta fuera de los limites de la ley que el Congreso ha aprobado. El Congreso no dijo al pueblo que

prepare su constitución para un gobierno independiente y soberano. Que diría el Presidente de los Estados Unidos sí ese pueblo que se ha titulado digno de tradicciones gloriosas ha preferido degradar su propia soberanía sometiendo "sometiendome a mí lo que debieran ellos hacer por si mismos, sin ingerencia extraña?" Yo, Presidente de los Estados Unidos, educado en las tradiciones libres y verdaderas, voy a respetar la soberanía de ese pueblo, lo cual señores es que una bofetada el pueblo filipino; es un verdadero acto de humiliación; es un cerdadero acto del cual tendremos que avergonzarnos para siempre. Vamos a suponer, señores, que el presidente de los estados unidos no dign nada, que se conforma con revisar la constitución de nuestro gobierno independiente. Todos nosotros sabemos que, según la Ley Tydings-McDuffie, el Presidente de los Estados Unidos puede objetar ciertas disposiciones y devolvernos la constitución y decir que la combiemos. Se conformarán ustedes en que la constitución del pueblo filipino independiente que es soberano, pueda ser objeto de objecciones por el Presidente de los Estados Unidos, y poder decir el Presidente de los Estados Unidos que tales disposiciones no deben estar en nuestra constitución y que tal otra disposición es la que va a estar ahí? Pueden ustedes consentir que el Presidente de los Estados Unidos se impogna sobre las disposiciones que han de regir en nuestra constitución como pueblo independiente? Repito, señores, es una renunciación a una de las piedras más hermosas de nuestra soberanía, si no una renunciación a la esencia misma de nuestra soberanía, sería cometer una verdadera injusticia al pueblo si permitimos que los disposiciones de nuestra constitución puedan ser impuestas

por otra persona extraña a nuestro pueblo. Que impnga ahora limitaciones y restricciones sobre esta constitución o mal llamada constitución que ha de regir mientras estamos subyugados, pero jamás que imponga restricciones sobre una constitución de un gobierno independiente en la que nosotros seremos los únicos y exclusivos soberanos. Si permitieremos tal cosa, sería un documento que en lugar de ser glorioso me daría verguenza legar a nuestra posteridad.

SR. ARANETA. Para algunas preguntas al orador.

EL VICE PRESIDENTE. El orador puede contestar, si le place.

SR. REYES (G.). Sí, señor.

SR. ARANETA. Esta conforme el orador con la idea lanzada por el Delegado Palma, que no obstante estar opuesto a la resolución, el sin embargo, opina que la constitución no ha de ser letra muerta despues del gobierno de la mancomunidad y continuará en vigor, a menos que sea enmendada?

SR. REYES (G.). He dicho que yo mismo me averguenzo legar a la posteridad una constitución de esa clase. La constitución que ahora preparemos, necesariamente ha de regir hasta que nosotros preparemos otra; pero si nosotros, que por más de trescientos años hemos aspirado a la independencia, cuando se proclame nuestra independencia no perderemos ni un minuto para derribar todas las disposiciones que no nos convenga o que nos afrenten, y sustituirlas por otras que sean la expresión de nuestros ideales, sin limitaciones, ni restricciones de ningu genero.

SR. FRANCISO. Ha expirado ya el plazo del orador.

Sr. KAPUNAN. Concedo dos minutos más al Caballero por Tayabas para contestar las preguntas del Caballero por Manila.

SR. ARANETA. Quiero decir el orador que estaría dispuesto a favorecer una disposición constitucional en el sentido de que la constitución que aprobemos ahora automáticamente sería letra muerta cuando se declare la independencia de filipinas?

SR. REYES (G.). No estoy conforme con ninguna disposición de esa naturaleza que produzca el caos inmediatamente despúes de la independencia. Supongo que el Caballero por Manila sería el primero en sufrir, porque en Manila empesarán todas las revueltas; pero digo yo, que inmediatamente despúes de proclamada la independencia, por prácticas internacionales, por sentido común, las leyes ahora vigentes deben continuar vigentes hasta que no adoptemos una nueva constitución que será nuestra propia, que no haya sido sometida a ningun soberano extraño.

SR. ARANETA. En su opinión honrado, cual sería el mecanismo para que nosotros podamos aprobar otra constitución cuando seamos independientes, es decir, que sería la autoridad para convocar una nueva convención constitucional emanaría de los disposiciones que nosotros escribamos en esta constitución con respecto a la forma de enmendarla, o emanaría de alguna otra autoridad distinta a las disposiciones que nosotros incluyamos con respecto a la forma de enmendar esta constitución.

SR. REYES (G.) Voy a contestar la pregunta de S. S. con otra: Como y bajo que autoridad se preparó y se promulgó la constitución de Malolos en nuestra fenecida Republica Filipina?

SR. ARANETA. De modo que, entiendo por la pregunta del

orador, el esta a favor de que la nueva constitución que aprobemos cuando seamos completamente independientes, serpa una constitución que no derivará su nacimiento de la forma que nosotros instituyamos con respecto a las enmiendas a esta constitución que nosotros aprobemos?

SR. REYES (G.). Sea cual fuere, la constitución de Malolos que conteste de donde provino. De allí ha dd provenir nuestra constitución, como se hizo, de allí se ba a derivar todo. Es un precedente que puede resolver todas las dudas.

SR. ARANETA. Es todo, y muchas gracias.

MR. ROXAS. Mr. President, I yeild twelve minutes to the man from Cagayan.

MR. PIO. Mr. President.

THE VICE PRESIDENT. The gentleman from Cagayan has the floor.

SPEECH OF MR. PIO.

Mr. President and gentleman of the Convention: After hearing the masterful arguments of the gentleman who have already spoken in favor of the resolution under debate, I find myself feeling reluctant to speak in favor of the same resolution for fear that I might only disappoint their convincing logic. But, Mr. President, at the same time I fear that if I do not now rise and make known my stand in favor of this question I would be recreant to my duties as one of the humblest delegates of this Body. Mr. President, I sincerely believe that there are three vital points w which we should not fail to consider in the duscussion of this resolution. The first is whether this constitutional Convention has the legal power to formulate and draft a constitution that will extend not only throughout the period of the commonwealth government but also thereafter. The second is whether if this Constitutional Convention formulate and draft a constitucion

that is intended to serve not only diring but also after the period of the Commonwealth Government. The President of the United States may disaprove it. The thirs is, in the event that the President of the United State will see fit to disparove the constitution, shall we loss our independence? Mr. President, I sincerely believe that this constitutional convention can legally formulate a constitution for the commonwealth government. I believe that we are agreed to the fact that this provisions of Section 1 of the Independence Act, otherwise known as the Tydings-McDuffie Law, clearly and specifically stop that there is no question about the power of this convention. With respect, however to the power of this Constitutional Convention to formulate and draft a constitution that will serve as the fundamental law of the land after the commonwealth government, I believe that there is room for an honest difference of opinion. It is not my intention, Mr. President, to clash with the legal luminaries of this body but, I , for one, sincerely believe that this august body can draft and formulate a constitution that will not only serve as the fundamentao law during the Commonwealth but also as the fundamental law of the Independent Philippines. Mr. President, Section 10 (a) of the Tydings-McDuffie Law specifically provides that after the transition period the President of the United States shall recognize the independence of the Philippine Islands as a free and self-goberning and independent nation and shall acknowledge the control of the government then constituted under the constitution then in force. Now, Mr. President, the said section 10 (a) provides that the President of the United States shall acknowledge the contro of the government then constituted under the constitution then in force at that time. When said President will recognize the independence of the Philippine Islands what shall be that constitution then in force? I repeat, Mr. President, tjat

inasmuch as the Tydings-McDuffie Law does not authorize the calling of another constitutional convention during the transition period not is there any other law authorizing the calling of such convention, there will be no other constitution then in force than this constitution that t is body formulates and drafts. Likewise, Mr. President, Section 2, paragraph (b), subsection 2 of the same law, provides that the officers elected and serving at the time independence shall be recognized shall continue as the constitutional officers under the constitution under which the government has been constituted. What shall be that constitution adopted by the people under which those officers serving the government then? Certainly, Mr. President, there shall be no other constitution adopted under the provisions of the Tydings-McDuffie Law if not the same constitution which this body now formulates and drafts. Furthermore, Mr. President, Section 2 of the same law, provides two classes of mandatory provisions; namely those provisions that will take effect only during the period of the Commonwealth government, and also those provisions that will take effect only after the independence of the Philippine lands shall have been recognized. If the intention of the United tes Congress was not to authorize this convention to formulate nstitution for the independent Philippines, why dis the Ame- Congress authorize this convention or oblige this Convention ude those mandatory provisions to take effect only after ence shall have been recognized? . . . . . lent, those mandatory provisions that will take effect the recognition of the independence of these Islands o effect and shall not be binding upon the new on theindependent government of the Philippine they are included now in this constitution and be made a constitution then of the Philippine

For all these reasons, Mr. President, I sincerely believe that this constitutional convention is legally authorize and can legally formulate and draft a constitution, not only a constitution for that period of the commonwealth government, but also after the period of the commonwealth government.

Mr. President, I have stated at the start that the second point which I am going to discuss is whether in the event that this constitutional convention formulates and drafts a constitution that is intended to serve not only as a constitution for the commonwealth government but also for the government after the period of the said government of the commonwealth - Mr. President, I sincerely believe that the President of the United States will not disapprove a constitution formulated by this body only because that constitution is intended to serve as the constitution not only of the commonwealth government but also for the government that follows that commonwealth. Section 1 of the Tydings-McDuffie Law, Mr. President, provides that the constitution which we must adopt now must conform to certain conditions and qualifications. Thos conditions and quelifications are enumerated in the mandatory provisions. in accordance with the oft-repeated rules of statutory construction that when the law makes enumeration everything not enumerated is presumed to be excluded, only those conditions and qualifications enumerated in the mandatory provisions are the conditions to which the constitution which we make must be subjected. Altho the constitution which we will make is intended to be a constitution for the commonwealth government or the government after the commonwealth, provided that it contains those mandatory provisions, it will be and it will have to be signed and approved by the President of the United Statess.

In the third place Mr. President, in the event that the President of the United States will deem fir to disapprove the constitution, that will not mean that we shall have lost our much-coveted independence, The Tydings-McDuffie Law specifically provides that in case or Presidential disapproval, it will have to be returned to the convention so that the convention can act thereon after which the convention and the President can then agree. In that case, Mr. President, we can be sure that even if the constitution we shall approve will be disapproved by the President of the United States, it will not mean that we shall have lost our independence.

THE PRESIDENT. The time of the gentleman has expired.

MR. ROXAS. I yeild three more minutes to the gentleman.

MR. PIO.(Continuing.) It has been said here, Mr. President, that in-asmuch as the law is very clear, that we can make a constitution not only for the commonwealth government but also for the government after that, there is no need to make and pass t is resolution. I contende, Mr. President, that even if the law is very clear, inasmuch as we do not lose anything and we gain everything if we approve this resolution I belive that it is the duty of this convention to approve that resolution. It has been always said here, Mr. President, that because it is shown clearly that we do not need this resolution, it should be tabled. I want to contend also, Mr. Presidente, that this august body should approve that resolution in order to define our stand.

SR. KAPUNAN. Sr. Presidente, concedo quince minutos para el caballero por Sulu.

EL PRESIDENTE. Tiene la palabra el Sr. Delegado por Sulu.

DISCURSO EN CONTRA, DEL SR. MONTAGO.

MR. MONTAGO. Mr. President and Gentlemen of the Convention: You know that all points are already hackneyed and threshed, and consequently I may consider myself as but a mere gleanmr. A gâêaner, you know, is he who picks up here and there grains or anything that is left in the field, So I considert it my privilege to phead for your indulgence.

This is really a very difficult or very important matter to dîscuss upon. At the same time, I consider it also very easy and trivial. It is difficult because we are going to frame the constitution that will serve as the monumental document of super-law, I should say. And it is very easy because we have the source of all arguments, which is the tydings-McDuffie Law.

First of all, I feel proud of the fact that mos of the members of this convention are lawyers of good reputation, lawyers of fame as jurists. Others are brilliant and erudite philosophers and scholars in different intellectual walks of life. We have here such a man as President Osias, a man who is reput reputed to be brilliant in all hisopinions and specially insofar as his love of country is concerned. I praise and admire those who favor the resolution because of their sterling and unflinching patriotism. But I say that patriotism in time pf peace, like the present, must be conducive and must be within the law, within that norm of conduct that is known to everybody. In every profession, in every school social or personal, intellectual activity, the rule or the norm of conduct must prevail. If this so, I am now going to discuss whether the resolution is necessary

and consequently should be approved, or otherwise.

It has been discussed and touched upon by many lawyers who preceded me from the legal standpoint of the resolution. Now I would like to add, as a matter of addenda to what .... I have already spoken. Gentlemen , it is but plain and simple question that we should be guided by the rules, by the decisions of the court of last resort. This is a law that we have to interpret. Shall the interpretations be guided by the over-patriotism and shall the interpretation be done in such a way that we might be criticised by other intellectual luminaries coming from the United States? Many contend that the law Tydings-McDuffie is very specific about the continuation of the constitution that we are to draft. Gentlemen, you must understand and you will agree with me as to the law of necessity in case the two governments will succeed each other. The government that we are going to establish here is not sovereign, asit has been said. It is a partial sovereignty that is imparted to us by the conqueror. You know already that there are limitations to that sovereignty which are embodied in what we call here the mandatory provisions. And then, upon the passing of this government, after all the conditions shall have been complied with, as President Palma has stated here, for a period of exactly ten years during which time we shall look after the welfare of the Filipino people, after passing through this period of test, so to say, then a full and complete sovereign state will spring up. When this time comes, I ask: who is going to convene in that case to frame up the constitution? I answer, gentlemen, that according to the

authority that I am going to read to you, if you will hear me, on Constitutional Law, it says here:

> "A convention has no inhereht rights; it exercises powers only. Delegated power defines itself. To be delegated it must come in some adopted manner, to convey it by some defined means. This adopted manner, therefore, becomes the measure of the power conferred. The right of the people is absolute, in the language of the Bill of Rights, 'to alter, reform, or abolish their government as they may think proper' This right being theirs, they may impart so much or so little of it as they shall deem expedient. It is only determine, by the mode they choose to adopt, the extent of the powers they intend to delegate. Hence, the arguments which imputes sovereignty to a convention because of the reservation in the Bill of Rights is a utterly illogical and unsound. The Bill of Rights is a reservation of rights out of the general power of government to themselves, but is no delegation of power to a convention. It defines no manner or mode in which the people shall proceed to exercise their right, but leaves that to their after choice. Until then it is unknown how they will proceed , or what powers they will confer on their delegates. Hence we must look beyond the Bill of Rights to be the mode adopted by the people, to dind the extent of the powet they intend to delegate." (Quoted from Wood 's appeal, Supreme Court of Pennsylvannia, 1874, 75 Pa. 59. (Cases on Constitutional Law, p. 8).

Now, speaking from the Filipino standpoint of view we always consider as sovereign by a force majeure the right of conquest of another strong government, strong rase or a strong people and this is what limits us now to consider much agsinst our will that we are a sovereign people at this time. And what we are now enjoying is nothing but that imparted to us that privileged that little allowance that is being given to us, so as to exercise the partial sovereignty now we are enjoying here.

This government that we are going to establish and the constitution that we are called upon to frame is not absàlute but it could not be binding, because if this principle, which I have just read to you is true, the soverieng people after the death or disappearance of the commonwealth will be the people, the filipino people that are responsible by the right of sovereignty to draft their constitution — to

to adopt the permanent, good, stable and enduring provisions of the constitution that we are going to draft, including the bill of rights as the source of our future democracy full and stable and to provide for other provisions inherent in the rights of full and complete sovereignty, as, for example, the treaty power of the provisions and any others that are until now enjoyed by us.

(Here the gavel fell).

MR. MONTANO. (continuing). So what should be the effect if we are to encroach unnecessary power that we do not have today upon the power of our future successors? Ofcourse, if we follow the natural law that a man ought to die when he reaches the necessary age to die, we shall be able to still be the component of the Filipino people ten years hence, but we cannot say that the same filipino body politic of today will be the same body politics of tomorrow. Of course, individuals will succeed each other for the perpetuation of the race. The same body politic of today will be the same body politic of tomorros, but circumstances will changes, political ideas will change. We may have a sort of a republican form of government but in its qualified way.

Now the provisions here could not be cited in favor. For example, paragraph 16, sec. (2) which says: "That the officials elected and serving under the constitution adopted pursuant to the provisions of this act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall

P 747

serve their full terms ofoffice as prescribed in the constitution." How can we infer from this wording of the law that this constitution that we are going to frame is going to be the same constitution during the republic? The law here is very specific. It says: "shall serve their full terms of office." After that full term, there must be a new term. Why the Legislature did not put here .....
continue as public officers of the republic." This explains only the necessity of continuing the government until the filipino people will be able to establish another one.

MR. MONCADO. Mr. President, will the gentleman yield for a question.

THE VICE PRESIDENT. The gentleman from Sulu may answer if he so desires.

MR. MONTAÑO. I will answer the gentleman if I be given an extension of time.

MR. KAPUNAN. Cedo dos minutos mas.

MR. MONCADO. You mentioned a while ago that the government of the present may not be the government of the future, is that right?

MR. MONTAÑO. No, I did not mention that. I mean the people; the same people today, you and I and ebery body here, may not live up same tomorrow. If we follow the natural law of death, we may live up to old ages and witness the coming of independence. But, if we do not follow the natural law of death, it may come and call on us anytime.

MR. MONCADO. You mention also soverèign power and sovereignty. Will you distinguish between de facto sovereignty fro from that of de jure sovereignty?

P. 748

MR. MONTANO. There is no defacto sovereignty. There may be de facto government, but I mean to say when I was speaking that the expiration of the ten year transition period ipso facto the complete and absolute soveriengty of the Filipino people will be forthcoming.

LEVANTAMIENTO DE LA SESION

SR. ROMERO. Sr. Presidente, pido que selevante la sesión hasta el lunes, 3 de Septiembre de 1934, alas 4:0o de la tarde.

EL VICE PRESIDENTE. (Sr. Montinola). Si no hay objeción, se levanta la sesión hasta el lunes 3 de Septiembre de 1934, a las 4:00 de la tarde.

Eran las 11:03 a. m.